

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

United States of America,)	CRIMINAL NO. 0:09-709-CMC
)	
v.)	OPINION and ORDER
)	
Corey T. Bailey,)	
a/k/a Korey T. Bailey,)	
)	
Defendant.)	
_____)	

Defendant, proceeding *pro se*, seeks relief in this court pursuant to 28 U.S.C. § 2255. Defendant raises one claim relating to alleged ineffective assistance of counsel. In response to Defendant's motion, the Government filed a motion for summary judgment. Pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the court advised Defendant of the summary judgment procedure and the consequences if he failed to respond. Defendant has not responded and the time for doing so has expired.

The extent of Defendant's assertion is that "[m]y lawyer told me that he put in an appeal for me but he didn't do it." Mot. at 4 (Dkt. #52, filed Feb. 4, 2011). In opposition, Defendant's counsel submitted an affidavit wherein he avers that "Mr. Bailey did not ask me to file an appeal in his case." Aff. of Zack O. Atkinson at 1 (Dkt. #68-1, filed Mar. 23, 2011).

Defendant has failed to respond to this averment by counsel. Therefore, for the reasons stated in the Government's response, which this court finds to be correct and adopts as its findings, the court **grants** the Government's motion for summary judgment and dismisses Defendant's motion with prejudice.

CERTIFICATE OF APPEALABILITY

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
May 11, 2011